

106TH CONGRESS  
1ST SESSION

# H. R. 352

To amend the Internal Revenue Code of 1986 to provide additional retirement savings opportunities for small employers, including self-employed individuals.

---

## IN THE HOUSE OF REPRESENTATIVES

JANUARY 19, 1999

Mr. BLUNT (for himself, Mr. BENTSEN, Mr. HILL of Montana, Mr. FROST, Mr. MCCOLLUM, Mr. TAYLOR of North Carolina, Mr. SCHAFER, Mr. MORAN of Kansas, Mrs. KELLY, Mrs. MYRICK, Mr. THUNE, Mr. LATOURETTE, Mr. SANDLIN, Mr. DELAHUNT, Mr. PETERSON of Pennsylvania, Mr. PITTS, Mr. HUTCHINSON, Mrs. EMERSON, Mr. COOK, Mr. METCALF, Mr. HINCHEY, Mr. YOUNG of Alaska, Mr. PASCRELL, Mr. SKEEN, Mr. BRADY of Texas, Mrs. CUBIN, Mr. MCCRERY, Mr. RILEY, Mr. KANJORSKI, Mr. MCINTYRE, Mr. TALENT, Mr. PAUL, Mr. LOBIONDO, Mr. HULSHOF, Mr. PICKERING, Mr. MORAN of Virginia, Mr. MANZULLO, Mr. DEAL of Georgia, Mr. ALLEN, Ms. MCCARTHY of Missouri, Mr. BALDACCI, Ms. HOOLEY of Oregon, Mr. NORWOOD, Mr. PEASE, Mr. POMEROY, Ms. KILPATRICK, Mr. SUNUNU, Mr. ENGLISH, Mr. DICKEY, Mr. WATKINS, Mr. COOKSEY, and Mr. WELLER) introduced the following bill; which was referred to the Committee on Ways and Means

---

## A BILL

To amend the Internal Revenue Code of 1986 to provide additional retirement savings opportunities for small employers, including self-employed individuals.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. REFERENCE.**

2 Except as otherwise expressly provided, whenever in  
3 this Act an amendment or repeal is expressed in terms  
4 of an amendment to, or repeal of, a section or other provi-  
5 sion, the reference shall be considered to be made to a  
6 section or other provision of the Internal Revenue Code  
7 of 1986.

8 **SEC. 2. QUALIFIED SMALL EMPLOYER PLAN.**

9 (a) IN GENERAL.—Section 401 is amended by redес-  
10 ignating subsection (o) as subsection (p) and by inserting  
11 after subsection (n) the following new subsection:

12 “(o) QUALIFIED SMALL EMPLOYER PLAN.—

13 “(1) IN GENERAL.—A trust created or orga-  
14 nized in the United States and forming part of a  
15 small employer plan of a small employer for the ex-  
16 clusive benefit of its employees or their beneficiaries  
17 constitutes a qualified trust under subsection (a) if  
18 such plan meets the requirements of paragraph (2).

19 “(2) REQUIREMENTS.—A plan meets the re-  
20 quirements of this paragraph if—

21 “(A) such plan is the only qualified retire-  
22 ment plan of a small employer,

23 “(B) the plan year for such plan is the cal-  
24 endar year,

1           “(C) as of the 1st day of the plan year,  
2           such plan covers all eligible employees of the  
3           employer,

4           “(D) such plan meets the contribution re-  
5           quirements of paragraph (4),

6           “(E) such plan meets the vesting require-  
7           ments of paragraph (5),

8           “(F) such plan meets the funding require-  
9           ments of section 412, if applicable, and

10          “(G) such plan meets the other require-  
11          ments specified in paragraph (6).

12          “(3) ELIGIBLE EMPLOYEE.—For purposes of  
13          paragraph (2)(C), the term ‘eligible employee’ means  
14          an individual who—

15                 “(A) has attained age 21, and

16                 “(B) has completed not less than 1,000  
17                 hours of service for the employer during the cal-  
18                 endar year preceding the plan year.

19          “(4) CONTRIBUTIONS.—A plan meets the re-  
20          quirements of this paragraph if—

21                 “(A) employer contributions to the plan—

22                         “(i) are not less than 3 percent, and  
23                         do not exceed 10 percent, of compensation  
24                         of all participants in the plan, and

1 “(ii) are allocated to all participants  
2 in the plan on a uniform basis without re-  
3 gard to subsection (l), and

4 “(B) in the case of discretionary employer  
5 contributions—

6 “(i) such contributions made to the  
7 plan do not exceed 15 percent of com-  
8 pensation and are allocated to all  
9 participants—

10 “(I) as a level percentage of com-  
11 pensation, or

12 “(II) under a formula that meets  
13 the requirements of subsection (l)(2)  
14 (relating to permitted disparity), or

15 “(ii) are made to the same plan under  
16 an arrangement that meets the require-  
17 ments of subsection (k), in which case the  
18 minimum 3 percent contribution referred  
19 to in subparagraph (A)(i) shall be applied  
20 against the nonelective contributions of  
21 subsection (k)(12)(C).

22 Nothing in subparagraph (B)(ii) shall be construed  
23 to exempt such plan from any other requirement of  
24 subsection (k)(12).

25 “(5) VESTING.—

“(A) IN GENERAL.—A plan satisfies the requirements of this paragraph if it satisfies the requirements of either of the following clauses:

“(i) 3-YEAR VESTING.—A plan satisfies the requirements of this clause if an employee who has completed at least 3 years of service with the employer or employers maintaining the plan has a nonforfeitable right to 100 percent of his accrued benefit derived from employer contributions.

“(ii) 6-YEAR GRADED VESTING.—A plan satisfies the requirements of this clause if an employee has a nonforfeitable right to a percentage of his accrued benefit derived from employer contributions determined under the following table:

<b>“Years of service:</b>	<b>The nonforfeitable percentage is:</b>
2 .....	20
3 .....	40
4 .....	60
5 .....	80
6 or more .....	100.

“(B) CERTAIN RULES MADE APPLICABLE.—Except to the extent inconsistent with the provisions of this paragraph, the rules of section 411 shall apply for purposes of this subsection.

1           “(C) YEAR OF SERVICE.—For purposes of  
2           subparagraph (A), years of service shall be de-  
3           termined under the last sentence of section  
4           410(a)(3)(A).

5           “(6) OTHER REQUIREMENTS.—

6           “(A) ARRANGEMENT MAY BE ONLY PLAN  
7           OF EMPLOYER.—

8           “(i) IN GENERAL.—An arrangement  
9           shall not be treated as a qualified small  
10          employer plan for any year if the employer  
11          (or any predecessor employer) maintained  
12          a qualified plan with respect to which con-  
13          tributions were made, or benefits were ac-  
14          crued, for service in any year in the period  
15          beginning with the year such arrangement  
16          became effective and ending with the year  
17          for which the determination is being made.  
18          If only individuals other than employees  
19          described in subparagraph (A) or (B) of  
20          section 410(b)(3) are eligible to participate  
21          in such arrangement, then the preceding  
22          sentence shall be applied without regard to  
23          any qualified plan in which only employees  
24          so described are eligible to participate.

1           “(ii) QUALIFIED PLAN.—For purposes  
2           of this subparagraph, the term ‘qualified  
3           plan’ means a plan, contract, pension, or  
4           trust described in subparagraph (A) or (B)  
5           of section 219(g)(5).

6           “(iii) GRACE PERIOD.—In the case of  
7           an employer who establishes and maintains  
8           a plan under this subsection for 1 or more  
9           years and who fails to meet any require-  
10          ment of this subsection for any subsequent  
11          year due to any acquisition, disposition, or  
12          similar transaction involving another such  
13          employer, rules similar to the rules of sec-  
14          tion 410(b)(6)(C) shall apply for purposes  
15          of this subsection.

16          “(iv) RULE OF CONSTRUCTION.—  
17          Clauses (i), (ii), and (iii) shall not be con-  
18          strued to prevent a rollover contribution  
19          that meets the requirements of section  
20          402(c) or to prevent the adoption of the  
21          qualified small employer plan as a succes-  
22          sor plan.

23          “(B) PLAN MAY NOT BE ESOP.—A small  
24          employer plan does not meet the requirements  
25          of paragraph (1) if such plan is—

1 “(i) a tax credit employee stock own-  
 2 ership plan (as defined in section 409(a)),  
 3 or

4 “(ii) an employee stock ownership  
 5 plan (as defined in section 4975(e)(7)).

6 “(C) OTHER APPLICABLE PROVISIONS.—A  
 7 plan shall not be treated as a qualified small  
 8 employer plan unless the plan meets the re-  
 9 quirements of—

10 “(i) paragraphs (1), (2), (9), (11),  
 11 (12), (13), (14), (15), (16), (17), (19),  
 12 (20), (22), (23), (27), (30), and (31) of  
 13 subsection (a), and

14 “(ii) subsections (b), (c), and (d).

15 “(7) TOP-HEAVY RULES INAPPLICABLE.—  
 16 Section 416 shall not apply to a trust that  
 17 meets the requirements of this subsection.

18 “(8) COMPENSATION DEFINED.—For pur-  
 19 poses of this subsection, the term ‘compensa-  
 20 tion’ has the meaning given such term by sec-  
 21 tion 404(a)(3)(A)(v).”.

22 (b) DEFINITION OF SMALL EMPLOYER.—

23 (1) IN GENERAL.—Section 414 (relating to  
 24 definitions and special rules) is amended by adding  
 25 at the end the following new subsection:

1       “(v) SMALL EMPLOYER.—For purposes of this part,  
 2 the term ‘small employer’ means an employer (including  
 3 a professional service organization) that, on the 1st day  
 4 of the plan year, has 100 or fewer employees.”.

5           (2) CONFORMING AMENDMENTS.—

6           (A) Subsections (b) and (c) of section 414  
 7 are each amended by inserting “subsection (v)  
 8 and” after “For purposes of”.

9           (B) Paragraph (3) of section 414(n) is  
 10 amended by striking “and” at the end of sub-  
 11 paragraph (B), by striking the period at the  
 12 end of subparagraph (C) and inserting “, and”,  
 13 and by adding at the end the following new sub-  
 14 paragraph:

15           “(D) subsection (v).”.

16       (c) DEDUCTION FOR CONTRIBUTIONS OF EM-  
 17 PLOYER.—Clause (i) of section 404(a)(3)(A) is amended  
 18 by striking “or” at the end of subclause (I), by striking  
 19 the period at the end of subclause (II) and inserting “,  
 20 or”, and by adding at the end the following new subclause:

21           “(III) the amount such employer is al-  
 22 lowed to contribute to such trust under  
 23 section 401(o) for such year, but not more  
 24 than 25 percent of aggregate compensa-  
 25 tion.”.

1 (d) SINGLE ANNUAL ENTRY DATE.—

2 (1) DEFINITION OF YEAR OF SERVICE.—Sub-  
3 paragraph (A) of section 410(a)(3) of such Code (re-  
4 lating to general rule for definition of year of serv-  
5 ice) is amended by adding at the end the following:  
6 “In the case of service for an employer who has in  
7 effect a qualified small employer plan under section  
8 401(o), computation of any 12-month period shall be  
9 made with reference to the first day of the calendar  
10 year in which employment of the employee com-  
11 menced.”.

12 (2) TIME OF PARTICIPATION.—Paragraph (4)  
13 of section 410(a) (relating to time of participation)  
14 is amended by adding at the end the following: “In  
15 the case of a qualified small employer plan under  
16 section 401(o), the preceding sentence shall be ap-  
17 plied without regard to subparagraph (B).”.

18 (e) COMPENSATION.—Subparagraph (A) of section  
19 404(a)(3) (relating to stock bonus and profit-sharing  
20 trusts) is amended by redesignating clause (v) as clause  
21 (vi) and by inserting after clause (iv) the following new  
22 clause:

23 “(v) COMPENSATION DEFINED.—For  
24 purposes of this paragraph, the term ‘com-  
25 pensation’ means a participant’s com-

1                   pensation   (as   defined   by   section  
2                   415(c)(3))”.

3       (f) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply to years beginning after December  
5 31, 1998.

6 **SEC. 3. CREDIT FOR EMPLOYER EXPENSES IN ESTABLISH-**  
7 **ING QUALIFIED SMALL EMPLOYER RETIRE-**  
8 **MENT PLANS.**

9       (a) GENERAL RULE.—Subpart D of part IV of sub-  
10 chapter A of chapter 1 is amended by adding at the end  
11 the following new section:

12 **“SEC. 45D. EXPENSES IN ESTABLISHING QUALIFIED SMALL**  
13 **EMPLOYER RETIREMENT PLANS.**

14       “(a) GENERAL RULE.—For purposes of section 38,  
15 the qualified small employer retirement plan credit deter-  
16 mined under this section for the taxable year is an amount  
17 equal to 50 percent of the qualified retirement plan ex-  
18 penses paid or incurred in the taxable year by an eligible  
19 small employer.

20       “(b) LIMITATION.—The credit allowed under sub-  
21 section (a) shall not exceed—

22               “(1) \$2,000 for the taxable year in which the  
23       qualified small employer retirement plan is adopted,  
24       and

1           “(2) \$1,000 for each of the 4 years following  
2           the year in which such plan was adopted and zero  
3           thereafter.

4           “(c) DEFINITIONS.—For purposes of subsection  
5 (a)—

6           “(1) QUALIFIED RETIREMENT PLAN EX-  
7           PENSE.—The term ‘qualified retirement plan ex-  
8           pense’ means an expense—

9                   “(A) for establishing, maintaining, and ad-  
10           ministering a qualified small employer retire-  
11           ment plan, and

12                   “(B) for educating employees with respect  
13           to such plan.

14           “(2) ELIGIBLE SMALL EMPLOYER.—The term  
15           ‘eligible small employer’ means a small employer (as  
16           defined in section 414(v)) who establishes a qualified  
17           plan on or after January 1, 1998, and on or before  
18           December 31, 2000.”.

19           (b) CREDIT MADE PART OF GENERAL BUSINESS  
20 CREDIT.—Subsection (b) of section 38 is amended by  
21 striking “plus” at the end of paragraph (11), by striking  
22 the period at the end of paragraph (12) and inserting “,  
23 plus”, and by adding at the end thereof the following new  
24 paragraph:

1 “(13) the qualified small employer retirement  
2 plan credit determined under section 45D(a).”.

3 (c) CREDIT ALLOWED AGAINST REGULAR AND MINI-  
4 MUM TAX.—

5 (1) IN GENERAL.—Subsection (c) of section 38  
6 (relating to limitation based on amount of tax) is  
7 amended by redesignating paragraph (3) as para-  
8 graph (4) and by inserting after paragraph (2) the  
9 following new paragraph:

10 “(3) SPECIAL RULES FOR QUALIFIED SMALL  
11 EMPLOYER RETIREMENT PLAN CREDIT.—

12 “(A) IN GENERAL.—In the case of the  
13 qualified small employer retirement plan  
14 credit—

15 “(i) this section and section 39 shall  
16 be applied separately with respect to the  
17 credit, and

18 “(ii) in applying paragraph (1) to the  
19 credit—

20 “(I) subparagraph (A) thereof  
21 shall not apply, and

22 “(II) the limitation under para-  
23 graph (1) (as modified by subclause  
24 (I)) shall be reduced by the credit al-  
25 lowed under subsection (a) for the

1 taxable year (other than the qualified  
2 small employer retirement plan cred-  
3 it).

4 “(B) QUALIFIED SMALL EMPLOYER RE-  
5 TIREMENT PLAN CREDIT.—For purposes of this  
6 subsection, the term ‘qualified small employer  
7 retirement plan credit’ means the credit allow-  
8 able under subsection (a) by reason of section  
9 45D(a).”.

10 (2) CONFORMING AMENDMENT.—Subclause (II)  
11 of section 38(c)(2)(A)(ii) is amended by inserting  
12 “or the qualified small employer retirement plan  
13 credit” after “employment credit”.

14 (d) LIMITATION ON CARRYBACK.—Subsection (d) of  
15 section 39 is amended by adding at the end thereof the  
16 following new paragraph:

17 “(7) NO CARRYBACK OF QUALIFIED SMALL EM-  
18 PLOYER RETIREMENT PLAN CREDIT BEFORE EFFEC-  
19 TIVE DATE.—No portion of the unused business  
20 credit for any taxable year which is attributable to  
21 the credit determined under section 45D may be  
22 carried back to any taxable year ending before the  
23 date of the enactment of section 45D.”.

24 (e) DEDUCTION FOR CERTAIN UNUSED BUSINESS  
25 CREDITS.—Subsection (c) of section 196 is amended by

1 striking “and” at the end of paragraph (6), by striking  
 2 the period at the end of paragraph (7) and inserting “,  
 3 and”, and by adding after paragraph (7) the following new  
 4 paragraph:

5           “(8) the qualified small employer retirement  
 6       plan credit determined under section 45D.”.

7       (f) DENIAL OF DOUBLE BENEFIT.—Section 280C is  
 8 amended by adding at the end thereof the following new  
 9 subsection:

10       “(d) CREDIT FOR QUALIFIED SMALL EMPLOYER RE-  
 11 TIREMENT PLAN EXPENSES.—No deduction shall be al-  
 12 lowed for that portion of the expenses referred to in sec-  
 13 tion 45D(c)(1) otherwise allowable as a deduction for the  
 14 taxable year which is equal to the amount of the credit  
 15 determined for such taxable year under section 45D(a).”.

16       (g) CLERICAL AMENDMENT.—The table of sections  
 17 for subpart D of part IV of subchapter (A) of chapter  
 18 1 is amended by adding at the end the following new item:

“Sec. 45D. Expenses in establishing qualified small employer retirement plans.”.

19       (h) EFFECTIVE DATE.—The amendments made by  
 20 this section shall apply to taxable years beginning after  
 21 the date of the enactment of this Act.

## 22 **SEC. 4. IMPLEMENTATION.**

23       (a) MODEL PLAN.—Not later than 6 months after  
 24 the date of the enactment of this Act, the Secretary of  
 25 the Treasury shall issue a model small employer retire-

1 ment plan that meets the requirements of section 401(o)  
2 of the Internal Revenue Code of 1986.

3 (b) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR  
4 OWNERS AND THEIR SPOUSES.—

5 (1) IN GENERAL.—The Secretary of the Treas-  
6 ury shall modify the requirements for filing annual  
7 returns with respect to one-participant retirement  
8 plans to ensure that such plans with assets of  
9 \$500,000 or less as of the close of the plan year  
10 need not file a return for that year.

11 ONE-PARTICIPANT RETIREMENT PLAN DE-  
12 FINED.—For purposes of this subsection, the term  
13 “one-participant retirement plan” means a retire-  
14 ment plan that—

15 (A) on the first day of the plan year—

16 (i) covered only the employer (and the  
17 employer’s spouse) and the employer  
18 owned the entire business (whether or not  
19 incorporated), or

20 (ii) covered only one or more partners  
21 (and their spouses) in a business partner-  
22 ship (including partners in an S or C cor-  
23 poration),

24 (B) meets the minimum coverage require-  
25 ments of section 410(b) of the Internal Revenue

1 Code of 1986 without being combined with any  
2 other plan of the business that covers the em-  
3 ployees of the business,

4 (C) does not provide benefits to anyone ex-  
5 cept the employer (and the employer's spouse)  
6 or the partners (and their spouses),

7 (D) does not cover a business that is a  
8 member of an affiliated service group, a con-  
9 trolled group of corporations, or a group of  
10 businesses under common control, and

11 (E) does not cover a business that leases  
12 employees.

13 (3) OTHER DEFINITIONS.—Terms used in para-  
14 graph (2) which are also used in section 414 of the  
15 Internal Revenue Code of 1986 shall have the re-  
16 spective meanings given such terms by such section.

17 (c) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR  
18 PLANS WITH FEWER THAN 25 EMPLOYEES.—In the case  
19 of a retirement plan which covers less than 25 employees  
20 on the 1st day of the plan year and meets the require-  
21 ments described in subparagraphs (B), (D), and (E) of  
22 subsection (b)(2), the Secretary of the Treasury shall pro-  
23 vide for the filing of a simplified annual return that is

- 1 substantially similar to the annual return required to be
- 2 filed by a one-participant retirement plan.

○